for The Defense

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The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

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A Juvenile's Dilemma

by Michelle Lue Sang, Supervisor--SEF Juvenile

Between a rock and a hard place. Between the devil and the deep-blue sea. The lesser of two evils. Many clichés describe the dilemma our juvenile clients find themselves in when they hear the words: "It is ordered that the assigned probation officer shall schedule a psychological evaluation, that the juvenile shall participate therein, and that the use of such evaluation shall be limited by the application of Rule 11.7," a standard order for juveniles pending transfer hearings. Webster defines dilemma as "a situation requiring a choice between two equally undesirable alternatives."

The dilemma is as follows: a juvenile who submits to a transfer psychological may later find that psychological evaluation used against him in adult court at an aggravation hearing. If the juvenile refuses to participate, his participation cannot be considered evidence of non-amenability to treatment; however, he may lose a valuable tool in defending against the state's transfer request.

The Arizona Court of Appeals addressed the issue of transfer psychological evaluations in *In the Matter of Appeal in Pima County, Juv. Action No. J-77027-1*, 139 Ariz. 446, 679 P.2d 92 (1984). The juvenile in that case, on the advice of counsel, refused to cooperate in a court-ordered mental examination for fear of incriminating himself in subsequent proceedings. The trial court interpreted the lack of participation as non-amenability to rehabilitation and granted the state's transfer request. The appellate court reversed, stating that it was "well settled that the privilege of self-incrimination" was applicable in juvenile delinquency proceedings. 139 Ariz. at 449, 679 P.2d at 95 (citing *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

The appellate court also referenced *Estelle v. Smith*, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981), the United States Supreme Court case which held that the privilege against self-incrimination applied to court-ordered psychiatric examinations and placed limitations upon their use in the penalty phase. The Supreme Court reasoned that the defendant's Fifth Amendment privilege against compelled self-incrimination was violated because the state's doctor failed to advise the defendant that any statements could be used against him at the sentencing proceeding. The state's argument that

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the Fifth Amendment was inapplicable to the penalty phase of a capital murder trial was summarily dismissed with the court relying on the *In re Gault* holding that "the availability of the [Fifth Amendment] privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites." *Gault*, 387 U.S. 1, 49 (1967). Additionally, the court did not accept the state's argument that the Fifth Amendment was not applicable because the defendant's communications were nontestimonial in nature and therefore removed from the provisions of the Fifth Amendment. The court concluded that the psychiatrist based his findings not merely on observations of the defendant, but on the defendant's recount of the crime during the psychiatric examination. *Estelle* at 464.

Since juveniles are not informed that psychological evaluations prepared for transfer hearings could be used against them in adult court, they are not afforded the protections provided by *Estelle* and *In re Gault* if the state is allowed to use the evaluations at aggravation hearings. Therefore, a compelling argument can be made that the state be prohibited from using transfer psychological evaluations after juveniles are transferred. Judge Mangum recently prohibited the state from using a juvenile psychological evaluation at an aggravation hearing. Judge Mangum ruled that since the juvenile had not been informed, prior to submitting to the evaluation, that his statements could be used against him, the state could not use the evaluation at the aggravation hearing.

. . . a compelling argument can be made that the state be prohibited from using transfer psychological evaluations after juveniles are transferred.

Juvenile public defenders have been, and must continue to be, vigilant in protecting the rights of juveniles. Juvenile public defenders have been making requests to limit the use of the transfer psychological to juvenile court and the response from the bench has been inconsistent. One commissioner granted the request; another refused, stating that he did not believe he had the authority to impose such a limitation; while still another said that the issue would have to be argued at the transfer hearing. In that particular case, the transfer request was withdrawn so the issue became moot. Since there appears to be no consensus of the juvenile court bench regarding the purpose and use of transfer psychological evaluations, it is imperative that adult public defenders oppose the use of those evaluations at aggravation hearings.

I suppose we could avoid the issue altogether by advising our clients not to participate; however, that may not be advisable in every case because transfer psychological evaluations sometimes provide information which can be beneficial to the juvenile. We should not hinder the search for potentially advantageous information, but we must also not compromise the juvenile's rights.

If the juvenile elects to participate in the evaluation, candor is necessary. Transfer psychological evaluations can be likened to rule 11 evaluations; therefore, a parallel can be made with the legislative policy "to ensure the complete cooperation of a defendant in order that the medical experts have sufficient information to formulate a reliable diagnosis." *Ulin v. Riddel*, 111 Ariz. 435, 532 P.2d 155 (1975) at 436.

One way to obtain a reliable diagnosis and protect the juvenile's Fifth Amendment privilege is to place limitations on the use of transfer psychological evaluations as suggested by the New Mexico Supreme Court in *Christopher P. v. State*, 112 N.M. 416, 816 P.2d 485 (1991). The court in that case properly characterized juvenile transfer proceedings as a critical stage in a child's involvement with the juvenile justice

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system and held that the Fifth Amendment prohibits compulsory participation in transfer psychological evaluations. In dicta, the court said that its holding did not necessarily exclude a court-ordered evaluation properly limited in scope. Since this began with a cliché, it seems only fitting to conclude with one. Juveniles who participate in transfer psychologicals and are transferred may have lost the battle, but not necessarily the war. Adult public defenders must continue the war in adult court and tirelessly attempt to stop the state from using a juvenile amenability measure in adult court. Ω

Forensics Today--Misidentifications

by David S. Moller, Sr., Lead Investigator

What do you do when you think your client is a victim of a misidentification?

As we perform our assigned tasks in the public defender's office, we may not have had the opportunity to work on cases in which our clients have been charged with crimes you know they have not participated in. In over seven years, I have been requested to look into just over 60 cases in which our clients have indicated a possible misidentification. In two-thirds (40) of those cases, the client was found to have been misidentified.

There are a variety of reasons for our clients being arrested or charged through mistaken identity. They range from a mistaken allegation of prior convictions being brought up for sentencing, to the arrest of the wrong individual for a warrant belonging to another person with the same or similar name. Most often, it takes our clients several days to as long as weeks to be assigned a public defender so that he or she is able to notify the attorney of the mistake. I would like to use this article to assist you in identifying when you may have a possible misidentification and how to begin the process to correct it.

There are several recurrent scenarios in which our clients may become subject to misidentification. The most common one is when the client is arrested for a warrant issued in his/her name as a result of a family member (brother, sister, cousin, etc.) who had used his/her name and personal information at the time of the original arrest. (More often than not, our clients are able to tell you who the likely culprit is in those matters.) A variation of this is when a personal friend or acquaintance who has access to someone's personal information has used it at the time of the original arrest.

Our clients themselves may contribute to the misidentification by using a family member's or friend's name at the time of a police officer inquiry or an arrest. The client may not realize at the time that the fictitious name he/she is using may have warrants for that person's arrest.

In some cases, our clients are arrested for sharing the same or similar name as that listed on an arrest warrant.

The following are some prime examples of past misidentifications:

In one case, our client was detained for a misdemeanor shoplifting charge. He identified himself to the police using the name of a friend who had not been around for a while. Unfortunately for the client, this friend was wanted for armed robbery.

In a recent case, our client was in the final process of taking a plea offer for a felony charge. This client had been arrested on a warrant which was over a year old. He had been in custody for just over a month when he indicated to his attorney that he did not recall ever being arrested for DUI, and, in fact, later stated he does not even drive. His arrest was due to his name matching the warrant and having a similar date of birth.

In a case which was handled in the Chandler Justice Court a few years ago, the client had been riding a bicycle in Chandler on his way to work. He was stopped for not having a Chandler bicycle permit sticker. During a check, our client was arrested on a warrant listing a similar name. The client was transported to the Avondale County Jail Annex on the west side of Phoenix due to local overcrowding. In court, through fingerprints, the client was indisputably exonerated from the warrant's charges. The only cause for the arrest had been the warrant. Our client asked if he was free to go. The arresting officer indicated that the client must return to the Avondale Jail Annex to be processed and released. The public defender inquired if the officer would be willing to transport the client back to Chandler Police Department to pick up his bicycle from police property. The officer's response was, "Let him walk."

. . . he did not recall ever being arrested for DUI, and, in fact, later stated he does not even drive.

One of the worst cases I encountered was when two of our clients' names matched the name listed on a warrant. The case involved a felony trespass, class 6,

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that was over three years old, and was originally one of our clients. During that period, three people had been mistakenly arrested on this warrant. I subsequently received two different requests. In the first request, the subject had been misidentified and had been in jail for over a week. The second subject, when I met with him in the jail, spoke very little English. While fingerprinting him, he asked me how many more months he would have to stay in jail. I thought he confused the word "months" for "days." Unfortunately, after locating the arrest records, I learned he had been in custody for 62 days on these charges. Further inspection of the records revealed that this same subject had also been the first person to be arrested two years earlier, and had spent a few days in jail prior to the sheriff's department learning of the mistake and having him released that time. The end result was that the original warrant was dismissed by the county attorney because law suits were being filed against the county.

Should a client indicate that he believes he has charges or an arrest which may be a result of a misidentification, we need to follow a few steps in order to clear up the matter. Begin by identifying the subject of the original arrest through LEJIS, police departmental reports or public defender records. Attempt to locate any Maricopa County Sheriff's Office booking numbers or police department booking numbers associated with the original arrest. Prepare a Subpoena Duces Tecum for certified copies of a booking photo, fingerprint card, booking record, the Maricopa County Sheriff's Office in/out fingerprint booking record, and the client's name listed in the original document, with any related information such as aliases, date of birth, social security number, booking number(s) and date and time of arrest.

Other sources of original fingerprint records can be found on criminal court conviction records found in municipal, county and state courts, probation departments, department of corrections, and the FBI. If you feel you need assistance, fax me a Request for Investigation. Include the client's booking number, and any related police departmental reports. If the client is in custody, a phone call will do.

Finally, I am often asked by our clients how to clear their record of the arrest. A.R.S. §13-405 should be cited, and the client advised to make an application to the court to have an order issued to seal and clear the client's record.

In the next article: an overview of the Automated Fingerprint Identification System (AFIS), a computer aid in the matching of fingerprints. Ω

Juvenile Appellate Work: Yes, we do that too!

by Helene F. Abrams, Juvenile Division Chief

Talk about kicking butt . . . This past couple of months the appellate gods smiled on the juvenile division. Five appellate decisions were issued during this period and we won them ALL. Because only one of the decisions is published, I thought I would summarize the cases for those who are interested. Some of these issues might be relevant to all of you.

On November 2, 1995, in a published opinion, the Arizona Court of Appeals ruled that telephonic testimony was not admissible in a restitution hearing. The juvenile questioned the amount of restitution requested and a hearing was set. After the second setting, the state announced that it would be "inconvenient" to bring the witness from Minnesota to testify and requested that the witness be allowed to testify telephonically. Over strenuous objection by defense counsel, the court agreed to allow the testimony over the phone. A phone call was placed to a number in Minnesota and, when the gentleman answered and identified himself, the court clerk in Phoenix swore him in. During the questioning it became apparent that the witness was being assisted by a female whose voice could be heard in the background. The juvenile court ordered restitution based on the telephonic testimony. The Arizona Court of Appeals reversed the restitution order. Relying on Rule 19.2, Rules of Procedure for the Juvenile Court, and the note following the rule, the appellate court concluded that telephonic testimony was not permissible in a delinquency case. The constitutional arguments were not addressed although the proper objections were made and the issues were briefed.

Congratulations, Gerald M. Kaplan.

The next case followed shortly after Jerry's win. On November 24, 1995, in a memorandum decision, the Arizona Court of Appeals ruled that you cannot disturb the peace of someone who is not at peace. The facts of this one demonstrate the validity of this holding. Our client, a juvenile, and his wife, also a juvenile, were involved in an argument. He, our client, accused her of dating another man. She yelled at him, pushed, shoved, and hit him. "At some point, [the wife] threw her baby's 'shoes and deodorants and stuff'" at the client. He threw a shoe and hit his wife in the face. He also swung a skateboard at her, hitting her in the arm and leg. She called the police and was the only witness to testify at the trial. The juvenile was charged with assault and

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disorderly conduct. The juvenile moved for judgment of acquittal on both counts. The motion was granted on the assault charge. The client was adjudicated (that's convicted to those who don't know juvy lingo) of the disorderly conduct.

The question presented on appeal was whether the peace of our client's wife could be disturbed when she "started it," or as the attorneys argued, how can you disturb the peace of someone who is not at peace? Relying on two decisions from the Missouri Court of Appeals, the child argued that if the wife wasn't in "repose of mind and peaceful intent," then her peace could not be disturbed. The Arizona Court of Appeals agreed, finding the following reasoning in one of the Missouri cases persuasive:

> The peace of an individual cannot be disturbed, unless the individual is within the peace. To charge that the peace of an individual is willfully disturbed is equivalent to charging that the individual is within the peace. A person not in the peace could be further provoked, but unless he is in 'repose of mind and peaceful intent' his peace cannot be disturbed.

. . . you cannot disturb the peace of someone who is not at peace.

Is the lesson to be learned from this case, if you start it you can't be the victim? David and Ellen Katz briefed and argued this case. Congratulations on yet another win for this fine appellate team.

One of the issues not addressed was: if the commissioner entered a judgment of acquittal on the assault charge because the client was justifiably defending himself, could he be convicted of disorderly conduct for the behavior which was justified in self defense? Oh, perhaps me thinks too much.

Next, on December 12, 1995, came yet another win. In another non-published decision, the Arizona Court of Appeals reversed and remanded a disposition (yes, that's sentencing) on a child who was committed to the Department of Juvenile Corrections after being adjudicated on a charge of minor in possession of a firearm. (The Department of Juvenile Corrections was previously called the Department of Youth Treatment and Rehabilitation. Most people still call it Adobe Mountain.) In 1994, the legislature passed a statute increasing the penalties for minors who possess firearms. The proposed legislation was heavily debated by those who lived in smaller or rural counties because hunting is a popular sport for some of the children who live in these areas. As a result of the debate, the statute which previously classified this offense an incorrigible act (a status offense) now became a delinquent act but only in Maricopa and Pima counties. But I digress.

A.R.S. Section 13-3111 sets forth the penalties for those children adjudicated for this offense. A fine and driver's license suspension or revocation are available as well as the options available in Section 8-232. Commitment to the Department of Juvenile Corrections is not an option available for the judges. (If one reads this carefully, it appears that detention is also NOT an available option.) "The commissioner CLEARLY exceeded his authority and abused his discretion by committing the juvenile to the department. [Emphasis added.]" Congratulations, David Smith, for successfully litigating this issue.

Within days, yet another win crosses our desks. In another memorandum decision, the court held that the juvenile court erred by ordering restitution to the victim in an amount beyond out-of- pocket expenses. Because the victim had already been partially reimbursed for her losses by her insurer, ordering the child to pay the victim an amount greater than out-of-pocket losses created a windfall to the victim. The court noted that generally insurance companies would be included as victims and be provided compensation through restitution. Because the plea agreement did not name the insurer, the court was limited in the amount it could order. Margaret Morse and Susan White--GREAT JOB.

Lastly, a very exciting but perhaps short-lived victory on a child who was transferred on a charge of felony murder. Although the judge found probable cause, the facts read more like a tragic accident than a homicide. Despite the recommendations AGAINST transfer by the court-appointed psychologist, the probation officer, and our psychologist, the court transferred this sixteen-year-old child on first degree murder. Fortunately, the court did not state the reasons for the transfer decision. (Could it be there were none?) Last week the Arizona Court of Appeals granted our stay of the criminal prosecution and then, the next day, vacated the transfer order and remanded the case back to the juvenile court. A very impressive win for Susan White. Hopefully, we will be able to convince the court to keep this child in the juvenile court.

As you can see the juvenile division is maintaining a very active appellate practice. While we have not won them all, we are still fighting the good fight. Feel free to call any of the attorneys if the issues are of interest to you. Only one caveat: you may have to listen to some bragging. Ω

RoUnD uP tHE uSUal SuPECts

by Christopher Johns, Training Director

The Ghost of Tom Joad: The Varied Art of Plea Negotiations

> *"Where there's a fight 'gainst blood and hatred in the air . . . Wherever there's somebody fightin' for a place to stand."*
>
> *--The Grapes of Wrath*

Ever since my first legal mentor taught me to "never bid against yourself" (albeit in the context of a personal injury case), practicing by that maxim in plea negotiations has inured to many clients' benefit.

But like the haunting cut from Springsteen's new album based on *The Grapes of Wrath* character, creating a negotiated settlement for a client in a criminal case is no easy task. Just like Tom Joad, our clients encounter injustice at every turn, even when they want to admit their guilt.

For the practitioner wanting more substantive guidance than remembering Tom Joad and not bidding against yourself, two popular books might be helpful.

The first is the former national bestseller, *Getting to Yes* by Roger Fisher and William Ury. The subtitle is "Negotiating Agreement Without Giving In." That's essential in our situation where most of the chips are held by the opposition.

The theory of *Getting to Yes* is simple: decide issues on the merits instead of just going through the haggling process. In other words, talk about interests instead of positions.

That idea actually works well for criminal cases because you can negotiate win-win settlements. When and wherever possible, the parties need to look for mutual gains. A weak case gets a better deal. But where interests conflict, which they also often do in the criminal arena, any result should be based on some fair standard that your opponent (the prosecutor) must be made to live up to. That standard should be independent. In the case of prosecutors, who are supposed to do "justice," they have the added constraints of ER 3.8 (*the prosecutor is a minister of justice and not just an advocate*). In other words, ethically, prosecutors are not supposed to "win."

So what's the how to? Basically, the book provides seven steps or topics that should be thought about and addressed in the process.

Interests

Sure, everyone thinks about the client's interests. But remember, this phase may also encompass the obvious *and* underlying interests. All interests should benefit the client. That does not mean, however, that counsel is to act in the client's best interest against the client's goal.

Options

The next step is to brainstorm on options. Brainstorming works best when done in groups. Talking to several people about different agreements may provide ideas that when combined create a workable agreement. The obvious is a dismissal or class 6 open. But there may be more.

Alternatives

You've got to have them. In a criminal case the alternative may be a trial or some other agreement (e.g., to provide cooperation). If an unacceptable offer is made, you must show that you can properly prepare for trial. In fact, the negotiation strategy that may be the best is plotting trial strategy from the beginning. Why? First, it prepares an alternative course of action which gives the client choices. Additionally, investigation usually provides additional information for negotiations that may factor into interests. For example, the government's case is even weaker than originally thought. That puts more pressure on a settlement.

Legitimacy

What this really means is being realistic. Base issues on fairness and not unrealistic demands--bearing in mind that you shouldn't stake out a position that cuts against your own interests.

Communication

In criminal practice this is a big problem. Finding time to conference with county attorneys is sometimes hard. Even though it's on their turf, being amenable to meeting them face-to-face in their office is often worthwhile--especially for the big case.

In some circumstances, especially for the less experienced (as well as the most experienced), thinking ahead about what to say is best. Just as importantly, anticipating the county attorney's reply is essential. Know what to respond to the objections to the negotiated settlement. Also, know what to listen for--especially in the way of interests.

Relationship

Clients come and go. While they are the most important issue in any negotiation, the relationship with another person is important. When negotiating, it's always best to leave the table with a strengthened relationship. When not adverse to the client, this may mean explaining or presenting ways to facilitate the agreement. This could be anything from writing the

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agreement yourself, to establishing procedures for future negotiations.

Commitment

It takes more time, but you should only make promises you can keep. Instead of running it by the county attorney first, run it by the client first.

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Roger Dawson's *Secrets of Power Negotiating* is also an interesting book for criminal practitioners. While bearing in mind that rarely do criminal defense law practitioners have a "power" position from which to negotiate, in some cases you probably have no choice but to assume such a stance. Why not? Dawson's basic idea is that sometimes you need to stake out a position and win at all costs (presumably legal and ethical).

This is "win-lose" negotiating. Dawson developed it primarily in a real estate context; however, its application to criminal law is practical under some circumstances.

A Dawson example is "The Vice Gambit." How does it work? Simple: no matter what kind of offer your counterpart makes, simply say "You'll have to do better than that." Then shut up. Putting aside the ethical issues, it's obvious this strategy can only be applied in a situation where the client refuses all offers. You know it, the county attorney doesn't. Do you have an ethical duty to pursue plea negotiations in such circumstances? Yes. Can you intentionally misrepresent? No.

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Getting to Yes is the superior book. Ω

All God's Children

by Helene F. Abrams, Juvenile Division Chief

WILLIE BOSKET

Some may know this name. In our profession, we oftentimes remember the names of the most brutal murderers, the merciless rapists and the petty thieves. Willie Bosket, by age 25, was named the most violent criminal in New York history. A new book, ***All God's Children***, by Fox Butterfield, attempts to explain how Willie got to be who he is. The book could be titled "Willie's Roots" but it seeks to do more than tell Willie's story. It is one man's attempt to explain how America became so violent. It is a story relevant to all of us.

The story begins in South Carolina, pre-revolutionary war. The Bosket family was sold into slavery to a family who lived in the area which would later be called Edgefield County. The people in Edgefield fought and killed constantly. The county became known as "Bloody Edgefield". In antebellum South Carolina, the arguing and fighting occurred between the white folks. They fought over their "honor." It is unknown how many African-Americans died because slaves were mere chattel; their deaths only affected the white man's pocketbook.

Willie's first known relative, Aaron Bosket, appeared on the voter's registration rolls in 1868. The end of the Civil War brought emancipation. It also brought fear to the whites who no longer had the luxury of cheap labor and control. The Ku Klux Klan first appeared in South Carolina about this time. Aaron Bosket remained meek and humble. His son, Pud (as in pudding), would not yield. Pud's search for self-respect led him into a life of violence. His quest for respect led him to a confrontation with his white landlord. Labelled "dangerous" for almost attacking his employer, Pud left the farm and began a life of criminal activities. Pud died in an automobile accident after picking up some corn liquor to resell.

Pud's wife moved the family to Augusta where James (Willie's grandfather) was raised without a father. Soon, James was designated "the toughest boy in the neighborhood." He married young, but after the birth of his son Willie James (everyone called him Butch) and a court-ordered payment of $2.00 per week for child support, Butch took off. So did Marie, his wife. One day when Butch was left with his grandmother, Marie left for Chicago. She did not see Butch again for years.

Before Butch went to school, he hustled money from everyone. Butch quickly learned that it was easy to skip school. He liked to break the rules. He exhibited his anger towards the neglect and rejection of his parents by getting in trouble. Butch's grandmother could not control him. Butch carried on the tradition of need for respect, and violence if necessary, to get it. Just before Butch was likely to be sent to a reformatory farm, Butch's grandmother took Butch to his mom in New York. Butch was eight years old.

Mom did not want Butch. One day she gave him a quarter and told him not to come back. Several days later, Butch wound up in Manhattan's Children's Court. Two months later, Butch began what would ultimately be

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a lifetime in and sometimes out of institutions. Butch stayed at the Wiltwych School for Boys for almost four years. It was the only place where he felt safe. The people at Wiltwych were the only family Butch ever had.

At age 14, Butch was sent to live with his father. Criminal activities resumed, as well as physical abuse inflicted by his father. After Butch's dad was sent back to prison, Butch, now 16 and an adult under New York law, went back to Harlem.

Despite an IQ of 130 and a pathetic background, when Butch was sent to prison for armed robbery, he was labeled an antisocial sociopathic personality. Survival in prison required a willingness to fight for respect.

It is one man's attempt to explain how America became so violent.

Once paroled, Butch married Laura. He and his new wife moved to Milwaukee. Two days later, Butch brutally murdered two people. The first because Butch believed he was being ripped off. The other because he was there. Butch received a life sentence. Laura was pregnant with Willie at the time. While in prison, Butch received a Ph.D. and was elected into Phi Beta Kappa. He was the only prisoner to ever receive the "key."

Willie was born a few months after Butch went to prison. He reached all his milestones early. He was a handful from the beginning. Before he was six, he was snatching things from other people. He learned early on that respect is determined by your reputation. Willie earned a reputation for being the "baddest, toughest person on the block." His behavior was unpredictable and mostly violent. His mom verbally abused Willie, calling him bad just like his father. His environment did nothing to help Willie. Harlem was filled with drugs, crime, and guns.

As you probably guessed, Willie's violent outbursts and refusal to go to school landed him in one "children's home" after another. Interestingly, at age 9, he was sent to Wiltwych--the same place at the same age as his father. Occasionally, Willie connected with female teachers or caregivers.

Willie was put on Ritalin and ultimately Thorazine. Medication did not help. All the schools' efforts at rehabilitation failed. Willie continued his unlawful activities once the schools were finished trying to work with him. By age 15, he had killed two people, and tried to kill another. Willie was sentenced to the maximum term, five and 1/2 years. At that time, juvenile court jurisdiction ended when a child reached 21 years.

The outrage at Willie's sentence produced one of the most drastic changes in juvenile law. The legislature in New York passed the Juvenile Offender Act of 1978. As a result, children as young as 13 could be prosecuted and sentenced as adults. People called it the Willie Bosket law.

Barely 16, Willie escaped from the institution and earned his first felony conviction. Later convicted for an offense he did not do, Willie became enraged. After he learned about his father's death (he shot himself rather than be recaptured after finally earning release from prison), Willie set fire to his cell. Third felony, life in prison. While serving this sentence, Willie stabbed a guard. Consecutive life sentences. Willie was 25. During the latter trials, Willie became his own attorney. He quickly found he liked this role. He was complimented by the court on numerous occasions.

Today, the importance of honor and respect has been translated by a generation whose reaction to dogging and dissing are just as violent. It is doubtful that New York's juvenile crime rate went down in the last 20 years since Willie's law was passed. Yet aren't these the same proposals being touted as the panacea for juvenile crime in Arizona?

The book does not answer the nature/nurture question. Both of these had significant impact on Willie. One of the author's conclusions is that children behave better when they feel good about themselves and know who they are and where they came from. Strong parenting skills are needed. Respect for ourselves is where change begins. Ω

Review of Probation-Related Issues in Arizona Advance Reports Volumes 200 -205

by Max Bessler, Chief Administrator
Office of the Legal Defender, Maricopa County

Probation Violation

State v. Fleming, 205 Ariz. Adv. Rep. 3 (1995)

The Arizona Supreme Court reviewed the actions of the court of appeals in *State v. Fleming*, 182 Ariz. 239, 895 P.2d 1002 (App. 1994). The defendant was placed on probation in Maricopa County in December 1988 for attempted robbery. While on probation, he was arrested in Pinal County in November 1990 for marijuana charges. Based upon these charges, the Maricopa County Adult Probation Department issued a probation violation warrant and placed a hold on the defendant on December 3, 1990. No other action was taken on the petition to revoke or warrant.

On October 21, 1991, the defendant pleaded to the Pinal charges and was sentenced to concurrent prison terms. The sentencing judge advised the defendant at the time of his plea that the plea could be used as an automatic violation of probation in Maricopa County and could receive a consecutive sentence. No one could tell the defendant when that matter would be heard in Maricopa County. The presentence report indicated that the Maricopa County probation officer had advised that proceedings were pending and that she anticipated recommending a presumptive, concurrent sentence.

Following sentencing in Pinal County, the defendant was transported to the Department of Corrections. Having heard nothing from Maricopa County and being informed there were no "holds" on him, the defendant initiated a "speedy execution form" to bring the matter to a head. On March 16, 1993, three years after the warrant had been issued, it was served upon the defendant. On March 23, 1993, he appeared before a Maricopa County judge pro tempore who operated on the assumption that the notice of "automatic violation" was in effect. No revocation arraignment and no probation violation hearing were held. The defendant agreed to proceed with sentencing as long as it ran concurrently to his current period of imprisonment. Sentencing was scheduled for another day. At that hearing, another judge pro tempore sentenced the defendant to a consecutive sentence. The defendant appealed.

On review, the court of appeals held that the automatic violation was appropriate since there is only one superior court in Arizona. The Arizona Supreme Court concurred with this statement but saw instead that the issue involved the proper interpretation and application of Rule 27.7(e): "If there is a determination of guilty, as defined by rule 26.1 of a criminal offense *by the court which placed a probationer on probation*, no violation hearing shall be required and the court shall set the matter down for a disposition hearing *at the time set for entry of judgment on the criminal offense*. [Emphasis added.]"

The Arizona Supreme Court noted . . .

> "According to the court of appeals' approach, because there is only one superior court in the state, a trial judge must always consolidate a probation violation hearing and an underlying criminal proceeding, even if the two cases come from different counties. Thus, under the rationale of the court of appeals, the Pinal County court itself had the defendant on probation and should have set the disposition hearing on the Maricopa County case at the same time as the sentencing in the Pinal County case. That was not done here, nor do we believe it should or could have been done. The Pinal County court should not be expected to make an appropriate disposition in the probation case without having access to the file. The Pinal County court correctly recognized that the probation revocation was a Maricopa County matter.
>
> We believe the court of appeals misapplied Rule 27.7(e). The intent of the rule is to require consolidation and simultaneous dispositions in cases falling within the rule. To have a meaningful sentencing in a criminal case, the trial court must have before it the file in that case including any and all presentence reports, plea agreements, and related documents. By the same token, to have a meaningful disposition in a probation violation proceeding, the court must also have the files for the probation case. . . . Instead of finding an automatic violation, the Maricopa County superior court should have proceeded with the revocation arraignment under Rule 27.7(e)."

In addressing the timeliness of the violation proceedings, the Arizona Supreme Court again relied upon *State v. Jameson*, 112 Ariz. 315, 541 P.2d 912 (1975), "[t]he question of whether the accused has violated the terms of his probation should be promptly resolved, and we expressly disapproved of the practice of

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continuing the probation violation hearing until after disposition of the new criminal charges."

In its summary, the Arizona Supreme Court noted, "The delay on the part of the state has been significant. This delay is not only unexplained, it is inexplicable. To remand this case and begin anew would render the time limits of Rule 27.7 meaningless." The opinion of the court of appeals, the findings of probation violation and the ensuing sentence were vacated. The petition to revoke was dismissed with prejudice.

State v. Adams, 203 Ariz. Adv. Rep. 28 (1995)

The defendant was serving a year in jail as a condition of his probation. He failed to return to jail after being allowed temporary release to attend a counseling session. He was subsequently sentenced to prison for escape and the probation charge. He appealed arguing that he could not be charged with escape since he had been on probation.

The court of appeals did not agree. "Thus, failure of a probationer to report to his probation officer at a designated place and time would not be an escape because probation supervision is not within the meaning of detention in a correctional facility. Failure of a probationer to return to jail from which he was temporarily released, on the contrary, is an escape."

Victims' Rights/Driving Under the Influence (DUI)

State v. Superior Court in Maricopa County, Judge Bolton, 200 Ariz. Adv. Rep. 31 (1995)

Patrick Cunningham struck a vehicle driven by Peter Munjas. Cunningham was charged with aggravated driving while under the influence of intoxicating liquor, a class 4 felony. During discovery, Cunningham's counsel requested that he interview Munjas. Munjas refused pursuant to victims' rights contained in A.R.S. § 13-4433. The trial judge granted Cunningham's motion to depose Munjas, finding that because he was not a crime victim he could not refuse a defense interview. The state filed a special action to determine if the trial judge erred in ruling that a person suffering property damage in a DUI collision is not a "victim" as defined by A.R.S. § 13-4401 through -4437.

The court of appeals noted Cunningham asserted that Munjas was not a victim because DUI is a "victimless" crime, Cunningham did not intend to harm Munjas, and Munjas was not personally "harmed" by the collision. Relying upon the plain language of the Victims' Bill of rights, the court of appeals held Munjas fell within the definition of "victim" as "a person against whom the criminal offense was committed."

"Although Cunningham only damaged Munjas' car rather than Munjas personally, the crime of DUI was nonetheless committed against him. Similarly, the definition of criminal offense . . . requires us to conclude that Cunningham's actions constituted a criminal offense threatening Munjas with physical injury. Common sense demands the same conclusion . . . Cunningham did not need a specific intent to harm Munjas . . . (and) he was the victim of property damage because his car was damaged. The statutory and constitutional provisions of the Victims' Bill of Rights do not require that a victim suffer personal injury to fall within the definition of a crime victim." The court of appeals held Munjas could refuse a pre-trial defense interview. The trial court's order was reversed.

Liability Issues

Maricopa County v. Tinney, Rose, and Barker, Judges of the Superior Court, 203 Ariz. Adv. Rep. 3 (1995)

Maricopa County, in facing its $67 million deficit, imposed a hiring freeze on December 14, 1995. Judge Rose determined that a bailiff position needed to be filled in Judge Barker's court and informed the Board of Supervisors that if they did not fill the position by January 29, 1996, he would issue orders to fill the position. The Board asked Judge Rose to support his request in writing. The Board felt the response was incomplete and requested that an analyst review the functions of the position. The analyst determined that further study was needed. Judge Rose ordered the Board to fund the bailiff position beginning January 26. A special hearing was held before Judge Tinney of Pima County. Additional information was presented why the position was needed. Judge Tinney ordered the Board to fund the position. The Board of Supervisors filed a special action with the Arizona Supreme Court.

Relying upon *Maricopa County v. Dann*, 157 Ariz. 396 (1988), the Arizona Supreme Court acknowledged that the Board had to show Judge Rose acted "unreasonably, arbitrarily, or capriciously in making the request." The supreme court did not find the Board's request for information on the necessity of the

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position to be unfair or burdensome. "In fact, information provided in answer to (the Board's) questions, concerning the possibilities of assigning a retiring judge's bailiff to another division or having two judges share a bailiff, was largely unresponsive. Additionally, much of the submitted documentation was simply irrelevant to the questions asked."

"Today's decision should not be viewed as a retreat from the inherent power of courts to preserve the judicial branch of government and our justice system, even to the extent of ordering, where necessary, the allocation of sufficient funding. Such an extreme measure, however, should be employed only under extraordinary circumstances and as a last resort after reasonable avenues of cooperation and compromise have been exhausted . . . While we have no doubt that the presiding judge was responding in good faith to what he perceived as an unreasonable attempt to restrict and control the operation of the court for which he was responsible, it does not appear to us that the narrow issue presented was sufficient to justify the measures taken here." Judge Tinney's order was reversed.

Northern Insurance Co. v. Morgan, 200 Ariz. Adv. Rep. 35 (1995)

The insurance company refused to defend Morgan in a civil case involving his sexual harassment of one of his employees. Morgan claimed that the harassment was not intentional. Citing *Continental Insurance Co. V. McDaniel*, 160 Ariz. 183, 772 P.2d 6 (App. 1988), the court of appeals affirmed the trial court's grant of summary judgment to the insurance company, finding the acts of sexual harassment were intentional and excluded from liability policy covering the company and employees.

Death Penalty: Aggravating\Mitigating Factors

State v. Walden, 201 Ariz. Adv. Rep. 3 (1995)

The defendant was found guilty of murder, sexual assault, sexual abuse, aggravated assault, kidnaping, burglary, and robbery. He was sentenced to death and prison. As part of the mandatory appeal, the Arizona Supreme Court found the murder was especially cruel since the victim was conscious during her attack and Walden committed the murder in an especially heinous or depraved manner because the victim was helpless, the murder was senseless, and Walden inflicted gratuitous violence. The supreme court did not uphold the finding that the victim was killed to eliminate a witness according to the standards established by *Ross*, 180 Ariz. 598 (1994). The supreme court concurred with the trial court that the defendant's mitigating factors of abusive childhood, model prisoner, age, and unhappy life experiences were not sufficiently substantial to call for leniency. The sentences were affirmed.

State v. Gulbrandson, 202 Ariz. Adv. Rep. 46 (1995)

The defendant was convicted of murdering his former girlfriend and business partner. She had suffered 34 stab wounds and other injuries. The pathologist believed most of the injuries were inflicted before her death which resulted from a punctured liver.

On appeal, the Arizona Supreme Court reviewed the following sentencing issues. Although the victim's family requested the death penalty, the supreme court could find no indication in the record that the trial court had given any weight to these "irrelevant, inflammatory, and emotional" statements in accordance with *Bolton*, 896 P.2d 830 (1995). The supreme court found no support that the trial court's holding the sentencing hearing on both the capital and noncapital offenses together provided inadmissible and prejudicial information.

Noting that a finding of senselessness or helplessness alone will not usually support a finding of especially heinous or depraved (*Gretzler*, 135 Ariz. at 52-53), the supreme court reviewed other *Gretzler* factors to determine if any one of them existed to combine with helplessness. Although the defendant gambled the day after the murder, it did not prove the defendant relished the murder. Because of the nature and extent of the victim's wounds, the supreme court found beyond reasonable doubt that the defendant inflicted gratuitous violence on the victim. The victim's helplessness was also proven beyond a reasonable doubt.

In mitigation, the trial court found the defendant was under unusual stress, had a character or behavior disorder, suffered physical and emotional abuse from ages 4 to 12, and demonstrated good character while incarcerated. The supreme court found no reason to consider the defendant's remorse or the support of third parties as relevant mitigating factors. In summary, the Arizona Supreme Court concluded the death penalty was the appropriate sentence.

State v. Murray, 202 Ariz. Adv. Rep. 3 (1995)

The defendant and his brother were convicted of the shooting deaths of a 65-year-old man and 60-year-old

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woman and stealing money from their store. The trial court concluded the killings were committed for pecuniary gains; were especially cruel since the victims were killed execution-style causing the victims to experience physical or mental pain and suffering prior to dying; were heinous and depraved since they involved gratuitous violence, helplessness, senselessness, and involved victim-elimination. The supreme court dismissed this last factor as aggravating in accordance with *Ross,* 180 Ariz. 598 (1994) and *Barreras*, 181 Ariz. 516 (1995). The supreme court rejected the defendant's argument that it was inappropriate to consider the multiple homicides as aggravating since it would constitute double jeopardy.

In mitigation, the defendants offered minor participation (unproven), intoxication (unproven), no threat to society (did not qualify), potential for rehabilitation (proven), dysfunctional childhood (unproven), nonviolent criminal history (unproven), juvenile experiences impaired his capacity to appreciate the wrongfulness of his conduct (unproven), head injuries (unproven), hyperactivity and impulsivity (while proven did not show that his ability to control his actions was substantially impaired), age (unproven), duress (unproven), would not be a grave risk (unproven), medical treatment (unproven), remorse (unproven), education (unproven), and cooperative (unproven).

State v. Williams, 200 Ariz. Adv. Rep. 11 (1995)

The defendant was found guilty of murdering his former girlfriend and attempting to kill a Circle K clerk and robbing her. He was sentenced to death on the first charge. In its review, the Arizona Supreme Court confirmed the trial court's use of the attempted murder conviction as an aggravating factor in addition to its especially heinous or depraved aggravation. The supreme court agreed with the use of "no prior record" and "past good behavior and character" as mitigating factors and dismissed as mitigating factors drug use, duress, the victim as the initial aggressor, the victim's family request for life imprisonment, defendant's strong family ties, age and race. The supreme court affirmed the convictions and sentences.

In a special concurrence, Chief Justice Feldman emphasized that "the survivors' recommendations on the 'appropriate sentence is not relevant to any of our statutory aggravating factors'." He noted that in its review, the supreme court has always assumed that the trial court does not weight these factors " . . . but one must wonder how accurate such an assumption may be. The sentencing decision in many capital cases is difficult enough without subjecting the trial judge to the emotional pressure of listening to the victims' understandable but legally inadmissible recommendations, often motivated by the need for catharsis and sometimes by the desire for revenge . . . We must decide cases according to law and logic, not emotion . . . I believe the time is near for the court to take a position forbidding the introduction of evidence calculated to influence the sentencing judge in a manner forbidden by the law. It should not be offered by the prosecution or permitted by the court."

Juvenile/Restitution

Maricopa County Juvenile Action No. JV131701 , 202 Ariz. Adv. Rep. 76 (1995)

The juvenile was adjudicated delinquent based on her admission to a charge of attempted theft of an automobile. The plea agreement provided that she would pay restitution in an amount to be determined at a hearing. Since the victim had moved out of state, the court allowed the victim to testify over the telephone with the juvenile and counsel present. The court established restitution based upon this testimony. The juvenile appealed. The court of appeals determined that since Rule 19.2 allows telephonic testimony only in dependency or termination of the parent-child relationship hearings, the juvenile court exceeded its authority in permitting telephonic testimony in this delinquency case. The restitution order was vacated and the matter remanded for a new restitution hearing.

The supreme court found three statutory aggravating circumstances and no statutory mitigating factors. The nonstatutory factors were minimal, at best. The conviction and sentence was affirmed.

Navajo County Juvenile Action No. JV-94000086, 193 Ariz. Adv. Rep. 52 (1995)

On two occasions the juvenile appeared before the court without counsel, parent, or guardian and waived his right to counsel and admitted the allegations. He was ordered to remain in detention until further order of the court.

On order of the court of appeals, the juvenile was appointed counsel for his appeal procedures. The court of appeals granted a stay pending the outcome of the appeal. In summary, the court of appeals held "Juvenile appeared before the court for his advisory and disposition hearings without benefit of counsel, parent or guardian. Juvenile was permitted to waive counsel and make

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admissions against his interest in violation of A.R.S. § 8-225. Accordingly, we hold that juvenile was denied his statutory right to counsel." The order of delinquency and disposition were reversed.

Broadbent v. Broadbent, 203 Ariz. Adv. Rep. 19 (1995)

Mrs. Broadbent left her 2½-year-old son beside the swimming pool when she went to answer the telephone. He fell in the pool and drowned. The Arizona Supreme Court ruled that "Mrs. Broadbent is not immune from liability in this case because of the doctrine of parental immunity, which we hereby abolish."

Sentencing

State v. Hardwick, 203 Ariz. Adv. Rep. 5 (1995)

The defendant was convicted of child molestation by a jury. The trial judge aggravated one of the prison sentences because there was no contrition. The court of appeals held "a convicted defendant's decision not to publicly admit guilt is irrelevant to a sentencing determination, and the trial court's use of this decision to aggravate a defendant's sentence offends the Fifth Amendment privilege against self-incrimination." See *State v. Holder*, 155 Ariz. 80, 745 P.2d 138 (App. 1987). The convictions and sentences were reversed. Ω

December Trial Results

November 27

Melvin Kennedy/Tim Ryan: Client charged with smuggling and transportation of marijuana. Trial before Judge Araneta ended December 1. Defendant found guilty. Prosecutor McKay.

November 28

Jim Wilson: Client charged with aggravated DUI (with prior and while on probation). Trial before Judge Topf ended December 4. Defendant found guilty. Prosecutor Mann.

November 29

Tom Kibler: Client charged with first degree murder. Investigator H. Jackson. Trial before Judge Seidel ended December 8. Defendant found guilty. Prosecutor Cutler.

December 4

Tim Ryan/Slade Lawson: Client charged with false imprisonment and two counts of aggravated assault (under two CR numbers). Investigator L. Clesceri. Trial before Judge Araneta ended December 13. Defendant found **not guilty** of one count of aggravated assault and false imprisonment but guilty of aggravated assault (non-dangerous) and the lesser-included disorderly conduct. Prosecutor Puchek.

Ann Whitaker/Mike Hruby: Client charged with aggravated assault and two counts of criminal damage. Investigator C. Yarbrough. Trial before Judge Sargeant ended December 6. Charges were dismissed with prejudice. Prosecutor Johnson.

December 5

Jim Cleary: Client charged with aggravated DUI. Investigator N. Jones. Trial before Judge Hertzberg ended December 8. Defendant found guilty. Prosecutor Righi.

December 7

Sylvina Cotto: Client charged with possession of dangerous drugs. Investigator T. Thomas. Trial before Judge Armstrong ended December 8. Defendant found **not guilty.** Prosecutor Vincent.

Joe Stazzone: Client charged with sexual abuse, child molestation and eight counts of sexual conduct with a minor. Trial before Judge Rogers ended December 21. Defendant found guilty. Prosecutor Heilman.

December 12

Stephen Rempe: Client charged with two counts of disorderly conduct. Trial before Judge Sargeant ended December 15 with a hung jury. Prosecutor Clarke.

Tom Timmer: Client charged with aggravated DUI. Trial before Judge Hertzberg ended December 20. Defendant found guilty. Prosecutor Manning.

December 13

Douglas Harmon: Client charged with three counts of aggravated assault (under two CR numbers) and three counts of endangerment. Investigator L. Clesceri. Trial before Judge Barker ended December 16.

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Defendant entered change of plea while jury was deliberating. Prosecutor Puchek.

December 18

Kevin Burns: Client charged with burglary and attempt to commit burglary. Investigator P. Kasieta. Trial before Judge DeLeon ended December 19. Defendant found guilty. Prosecutor Harris.

Editor's Note:
Additional information recently was received regarding a trial result reported in our December newsletter: Tom Kibler represented a client on an aggravated assault (dangerous) charge in a trial before Judge Sheldon which ended November 4. The defendant was found ***not guilty of aggravated assault, but guilty of disorderly conduct.***

Ω

MCPD--
30 Years and Still Going Strong

Over 30 years ago, in September of 1965, the Maricopa County Public Defender's Office (MCPD) was established. At that time the population of the county was 852,000; today it is estimated at 2½ million. Vernon B. Croaff was selected as the first Maricopa County Public Defender. The Chief Deputy Public Defender was Louis L. Zussman.

Initially, the office was located on the 4th floor of the old county Courthouse (125 West Washington). Our attorneys handled representation at justice court arraignments and preliminary hearings for the four Phoenix justice precincts, also housed in the old Courthouse. Additionally, public defenders appeared at superior court matters, probation revocation hearings, Rule 250 hearings, inquests, juvenile hearings (when requested), and appeals.

During the office's ten-month, 1965-66 fiscal year, 140 felony and "high misdemeanor" cases were assigned monthly to a staff of eight attorneys and nine support staff members. (Today's 184 attorneys and 128 support staff handle approximately 4480 case assignments each month.)

In July of 1969, ***The Arizona Republic*** reported, "The Maricopa County Public Defender, his chief deputy and chief investigator were fired yesterday by the County Board of Supervisors after a two-month investigation of allegedly illegal acts. . . . At the same time the supervisors announced the appointment of Ross P. Lee, an attorney in the defender's office, as acting public defender. He has been paid $9,060. His salary will go up immediately to $12,768." Shortly thereafter, Mr. Lee was later named as the Public Defender.

Fiscal Year 1986-87 was a year of dramatic change for the Maricopa County Public Defender's Office. On February 24, 1987, Presiding Criminal Judge Cecil B. Patterson ruled that the Public Defender's Office significantly violated the guidelines for attorney caseloads set forth in *State v. Smith*, 681 P.2d 1374, 140 AZ 355 (1984). In a series of orders, Judge Patterson restricted the number of cases assigned to the Public Defender's Office, and established a system for assignment of private counsel to a substantial number of felony cases normally handled by a deputy public defender. The court order remained in effect at the end of FY 1986-87.

When Ross Lee left MCPD in April of 1987, Stephen Rempe was selected as the Acting Public Defender. In August of 1987, Dean Trebesch was appointed as the Public Defender. Mr. Trebesch first came to our office as a trial attorney in 1975 and served in that capacity until 1981 when he was named as Maricopa County's Public Fiduciary. After being selected as Public Defender in 1987, Mr. Trebesch served as the head of the two county departments for the next four months until a replacement could be selected for the office of the Public Fiduciary.

Profile of an Original MCPD Member:

Eddie Yue, currently an investigator at our Durango office, is a native Phoenician and one of the original staff members of MCPD. He described the Phoenix of his youth as having a small-town atmosphere--an open-door town. A bus ride up 16th Street from Thomas to Glendale Avenue (the city's edge) cost 10¢. Starting his schooling at Washington Elementary, Mr. Yue continued his education at North High School and then Phoenix College. His college studies, although interrupted by military service, continued after he joined MCPD. He received a B.S. in Sociology from Arizona State University in 1974.

Mr. Yue recalled being the first employee hired by Public Defender Croaff. Although the 26-year-old Mr. Yue had no investigative background, he was hired as an interviewer based on the fact that he personally knew Mr. Croaff through his employment at Wing's Restaurant at 16th Street and Thomas. Interviewers met with new clients, and Mr. Yue recounted spending eight hours a day at the jail interviewing defendants. When needed, interviewers at that time helped with investigations.

When Mr. Yue later became an investigator, he assisted attorneys with all types of cases. He described

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how our office had a better rapport with the county attorney's office then because of its smaller size and more open environment. He also recalled how investigators used to ask deputy county attorneys what kind of "deal" they would give us on cases.

In 1972, Mr. Yue transferred to our Juvenile Division which at that time was supervised by Dick Rice, who had succeeded John O'Marra. In 1984, Mr. Yue moved back to the downtown office where he remained until returning to Juvenile in 1988.

Mr. Yue recalled that the juvenile center arose at its current Durango location following the donation of the land once known as Jamison Farms. ("Jamison" became the unofficial name for juvenile detention at the time, e.g., "You'll end up in Jamison.") Ed Voss, Becky Albrecht, and Terry Martin were some of the early attorneys he worked with there. Mr. Yue noted, "When I first came out here in the 1970's and 80's, the juvenile court center was the cat's meow in the nation. People used to come here and study [the system]. I don't think that's the case here. . . . We missed the boat somewhere. We haven't progressed."

In reflecting on the level of juvenile crime today vs. when he started with the office, Mr. Yue advised that even though the population has increased, he does not believe the percentage of crimes has grown. He added, "I'd like to think that society's winning the battle against crime."

Recollections Shared

James Kemper, Appeals Division Attorney, recalls that when he started at MCPD in 1969, he was the 14th attorney for the office which was still housed in the old Courthouse. He later worked on the famous Ernesto Miranda case, handling the appeal after its remand.

In 1975, Don Vert came to work for the office which had approximately 42 attorneys. Mr. Vert noted, "The daily court calendar was about 10-foot long and was hung on office doors the afternoon prior to hearings. Bernie Dougherty assigned all the cases for Prelims the afternoon prior to hearing." Starting as a Typist II, Mr. Vert progressed through the ranks and is now the Operational Services Manager. He observed the following changes over the years: the office went from hands-off to hands-on management, from 2½ floors to 10 floors, and from record-keeping with 3"x 5" cards and typewriters to a computerized tracking system. He also recalled the 1979 earthquake in California shaking our building when we were housed on Adams [in the TransAmerica Building], and memories of then-deputy public defender Grant Woods shooting around corners with his water gun.

(Editor's Note: Mr. Woods is now Arizona's Attorney General.)

Helene Abrams, who is now the Juvenile Division Chief, joined our office as a trial attorney in 1981. She recalled the starting salary of $18,500; the office consisting of one large room on the first floor of the Luhrs Building (approximately 50 attorneys and no individual offices); and lunch in Jim Logan's office ("good time to discuss cases, issues"). Ms. Abrams noted that during one of her trials, while cross-examining a victim of an aggravated robbery on his description of the suspects, she moved over to the jury box and asked the victim to look at her--not her client--while discussing his description. The victim responded, "What if I fall in love?"

Mike Fusselman, now a lead investigator, also started with our office in 1981. Mr. Fusselman remembered the informal, smaller scale of the office, and reported that members of the office frequently played softball together. Mr. Fusselman noted that one of the interesting cases he has worked on was the case of Joe Billy Gwinn, who interrupted a local newscast and held news anchor Bill Close hostage, at gunpoint, until Close read Gwinn's rambling statement on the air. In looking at the changes in our office since he started here, Mr. Fusselman reflected, "Dean brought the office out of the Stone Age. Night and Day. No comparison." Ω

Thank You

from Dean Trebesch,
Maricopa County Public Defender

Perhaps those of you who were present at our December 21 Christmas Party/30th Anniversary Celebration sensed that I seemed a bit stunned by my special award. I was stunned, and deeply moved by your kindness.

I still do not know how to adequately express my appreciation. When I received "Sheriff Joe's Shorts", I thought that was a neat tribute in a light-hearted way. However, when I learned there was more to come I was truly overwhelmed by your thoughtfulness and generosity.

It has been my privilege to work with you over these eight-plus years. You have kept the office afloat through some very difficult times, and have given me encouragement and support whenever it might help.

Thankfully, I believe, we have turned the corner and have a bright 1996 ahead. We are close to returning to full-staff, our new attorneys have already demonstrated

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remarkable abilities, numerous promotional opportunities are being given, and our two technology initiatives on office-wide automation and video conferencing with jail inmates look promising.

A large part of my job is to simply respond to your needs "in the trenches" and provide you with the "tools" necessary to get your jobs done as efficiently and successfully as possible. While it is usually a struggle, I have tried my best to look after those needs, and provide a decent work environment for our staff. But, without your enthusiasm and desire to be the best at what you do, I could never keep this office at the high level of respect it has attained from those who know it.

My "leadership and support" would be pretty shallow without the extraordinary talent I have here at this law firm. You keep me motivated and appreciative of how fortunate I am to be associated with you.

To each of you and all of you, thank you very, very much. You are always welcome to come by my office any time to see the award, or just to chat with me. I am even going to find a place for "Sheriff Joe's Shorts" (on the wall, of course!). Ω

Bulletin Board

◆ *New Support Staff:*

Brad Andrews joined Trial Group A on January 8 as their new office aide, replacing Stacy Smith who assumed Elia Hubrich's downtown role. (Ms. Hubrich is working now at our Mental Health office.) Mr. Andrews has studied Criminal Justice at Phoenix College and has a long-term career goal of being a professional writer.

Mary DeMel started on January 22 as Trial Group C's newest legal secretary (replacing Debra Pierce who returned to the Sheriff's Office). Ms. DeMel has worked as an administrative secretary for Arizona Boy's Ranch and for Arizona State University professors. She also was employed as a medical secretary and medical transcriptionist with Maricopa Medical Center. Ms. DeMel is fluent in Sinhala, the language of Sri Lanka.

Eleanor Descheeny-Joe is our newest Initial Services Specialist, starting here on December 18. Ms. Escheeny-Joe's background includes service as a Lieutenant with the Navajo Department of Public Safety and as a fraud investigator for several banks.

Tonya Hinkle, Debra Lazar, and **Melissa Mejia** started as Records trainees in December. All come to our office from the American Institute and are enrolled in paralegal courses.

◆ *Moves/Changes:*

Trial Group A now occupies the 2nd and 4th floors of the Luhrs Building. Our Reception Area, Initial Services Offices, and Records also moved to the Luhrs Building. With all of our downtown staffed now housed in the Luhrs Building, our mailing address has changed.

NEW MAILING ADDRESS:

Luhrs Building
11 West Jefferson, Suite 5
Phoenix, Arizona 85003-2302
(NOTE THE NEW ZIP CODE ↑)

Karen Andrews transferred on January 17 from Trial Group A to an administrative position. **Armida Herrera** transferred from Trial Group D to Trial Group A at the same time.

Joyce Bowman and **Angela Fairchild** are involved in a new pilot project at our office. They are no longer in Initial Services, but are serving as Legal Assistants. When an attorney has a large, complicated case and is preparing for trial, he/she may request the aid of Ms. Bowman or Ms. Fairchild. Their offices are now on the 8th Floor, and requests for their assistance are handled by Trial Group D Supervisor Tom Klobas.

Jodi Weisberg, formally with our Mental Health Division, recently left the office to take a position as the Arizona Bureau Chief with the *Arizona Journal*. She can be contacted at (602) 484-4800 ext. 235, or Fax (602) 484-4819.

◆ *Speakers Bureau*

Michael Hruby recently was recommended by former Commissioner Rae Chornenky as the deputy public defender to be "shadowed" by a member of the Valley Leadership (VL) program. This program annually selects people from the community who have demonstrated leadership abilities. While participating in VL, these members involve themselves in a variety of community activities to broaden their awareness and understanding of community issues, and subsequently assist them in future leadership roles. Mr. Hruby will take the VL member with him on a day in justice and superior courts as part of the VL's Executive One-on-One program, thereby allowing the member to see the criminal justice system in action from a defense perspective.

Colleen McNally addressed criminal justice issues with a group of social studies students from Chaparral High School on December 7 at Judge Reinstein's request. Accompanying Ms. McNally at this event was **Yvette Gray**. Ω

~ ~CONTEST REMINDER~ ~

for the Defense is going into the last month of a contest for members of the Maricopa County Public Defender's Office. The writing contest, which started in October 1995, ends February 1996. Any employee of our office may submit an original, unpublished, educational article of 200 words or more regarding criminal defense for use in the newsletter. If the article is accepted for publication (after a standard screening by the editor), the author automatically is entered in the contest. Articles need to be submitted by the 10th of February 1996 to be considered for that month's issue. The first place winner will receive two tickets to a Phoenix Suns home game. The second place winner will receive a $40 gift certificate for dinner at *Planet Hollywood*. For more information on the contest, contact any of the newsletter staff (Christopher Johns, Georgia Bohm, and Sherry Pape).

Maricopa County Public Defender Training Schedule

Date	Time	Title	Location
02/23/96	8:30 - 4:30	Attorney Training: ***MCPD's Going the Extra Mile-- DUI 1996*** with J. Gary Trichter, nationally known DUI Expert; co-author of Texas Drunk Driving Law (2nd Ed.); author of "cross-examination gems."	Crowne Plaza-- Central Avenue & Adams
02/28 & 29/96	9:00 - 10:30 a.m.	Support Staff Training: ***"Is this the party to whom I am speaking?"*** (Telephone procedure, etiquette, tips, etc.)	MCPD Training Facility

MISSION STATEMENT
of Maricopa County
Public Defender's Office

To provide, pursuant to constitutional and ethical obligations, effective legal representation for indigent persons facing criminal charges, juvenile adjudications and mental health commitments when appointed by Maricopa County Superior and Justice Courts.

VISION STATEMENT:

To achieve national recognition as an effective and dynamic leader among organizations responsible for legal representation of indigents.

GOALS:

- to protect the rights of our clients and guarantee that they receive equal protection under the law
- to enhance the professionalism and productivity of all staff
- to pursue the development of cost-effective alternatives to incarceration
- to perform our obligations in a fiscally responsible manner
- to ensure that ethical and constitutional responsibilities and mandates are fulfilled
- to produce the most respected and well-trained attorneys in the legal community